

HISTORY OF THE PROCEEDINGS

On October 28, 2022, National Fuel Gas Distribution Corporation (National Fuel) filed Supplement No. 248 to National Fuel Gas Distribution Corporation Gas Tariff – PA P.U.C. No. 9 with the Pennsylvania Public Utility Commission.

Supplement No. 248 was issued to be effective for service rendered on or after December 27, 2022. It proposed changes to National Fuel's base retail distribution rates designed to produce an increase in revenues of approximately \$28.1 million (9.2%). National Fuel also proposed an Energy Efficiency (EE) pilot program that would recover an additional \$1.2 million from residential customers annually in a separate rider, based upon data for a fully projected future test year ending July 31, 2024. National Fuel's proposals would result in the total bill for a residential customer, using 84 ccf per month, increasing from \$99.93 to \$109.67 per month or about 9.7%.

On November 8, 2022, the Office of Small Business Advocate (OSBA) filed a formal complaint, C-2022-3036655. On November 9, 2022, the Office of Consumer Advocate (OCA) filed a formal complaint, C-2022-3036725. The Commission's Bureau of Investigation and Enforcement (BIE) entered its appearance on November 15, 2022. The Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA) and the Pennsylvania Weatherization Providers Task Force (PWPTF) filed petitions to intervene on November 15, 2022, and December 1, 2022, respectively.

By order entered on December 8, 2022, the Commission suspended the rate filing until July 27, 2023, and directed an investigation to determine the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in the rate filings.

By notice dated December 8, 2022, this matter was assigned to me and scheduled for a prehearing conference on December 14, 2022. A prehearing conference order was also served on the Parties on December 8, 2022.

I convened the prehearing conference as scheduled. Counsel for National Fuel, BIE, OCA and OSBA appeared. Additionally, counsel representing intervenors CAUSE-PA and the Pennsylvania Weatherization Providers Task Force appeared and participated. The Parties agreed to a schedule for the service of written testimony and exhibits and evidentiary hearings were scheduled to take place beginning March 7, 2023. The Parties also agreed to two public input hearings on January 19, 2023. I issued a prehearing order on December 19, 2022, which memorialized the litigation schedule.

The public input hearings were conducted at 1 p.m. and 6 p.m. on January 19, 2023.

In accordance with the litigation schedule, the Parties served direct, rebuttal, surrebuttal and rejoinder written testimony. By email on March 3, 2023, the Parties requested that the first day of hearing be cancelled. The request was granted.

On March 3, 2023, National Fuel filed a motion for a protective order which was not opposed by any party. I granted the motion by order entered on March 6, 2023.

The evidentiary hearing convened on March 8, 2023. The Parties offered their written testimony for admission into the record. That testimony was admitted and the Parties were directed to provide electronic copies to the court reporter.

Counsel for National Fuel advised me and the Parties that certain corrections were required to National Fuel Exhibit DNK-1, Schedule 3, which was included as an exhibit to National Fuel Statement No. 2, the direct testimony of Donald N. Koch.¹ Counsel for National Fuel requested that it be permitted to share a corrected version of National Fuel Exhibit DNK-1, Schedule 3 with the Parties, and then move for its admission into the record after the hearing concluded. No party objected and I granted the request.

¹ National Fuel Statement No. 2 was included as a part of the Company's initial filing on October 28, 2022.

I requested National Fuel witnesses Brian M. Welsch and John D. Taylor to testify. Parties also cross-examined OCA witness Lafayette Morgan and OSBA witness Kevin Higgins.

On March 8, 2023, after the conclusion of the evidentiary hearing, National Fuel circulated a corrected version of National Fuel Exhibit DNK-1, Schedule 3 to the ALJ and the Parties. No Parties objected to the corrected version of National Fuel Exhibit DNK-1, Schedule 3. The Parties thereafter agreed to stipulate to the admission of the corrected version of National Fuel Exhibit DNK-1, Schedule 3. On March 10, 2023, the Parties filed a Joint Stipulation for Admission of Evidence. On March 10, 2023, I admitted DNK-1, Schedule 3 as a late-filed exhibit and directed National Fuel to file the exhibit with the Secretary's Bureau.

By email on March 20, 2023, the Parties reported that they had reached a settlement in principle on all issues and requested that I suspend the briefing schedule. I entered an interim order on March 20, 2023, which granted the request and I directed the Parties to file their joint petition for settlement on or before April 13, 2023. I also directed National Fuel to serve a copy of the joint petition and statements in support on each consumer complainant in the case. I directed any party who wished to object to the settlement to file their objections by April 24, 2023.

The Parties filed a Joint Petition for Approval of Settlement of Rate Proceeding (Joint Petition or Settlement) on April 13, 2023. The Joint Petition included Appendix A (Tariff Supplement); Appendix B (Proof of Revenue); Appendix C (Rate Impact Analysis); Appendix D (Proposed Stipulated Findings of Fact); Appendix E (Proposed Conclusions of Law); Appendix F (Proposed Ordering Paragraphs); and Appendices G through L, (Statements in Support of each of the Parties).

I did not receive any objections to the Joint Petition for Settlement. The record closed on April 25, 2023.

PUBLIC INPUT HEARINGS

Two public input hearings were conducted by telephone on January 19, 2023. Two witnesses testified. Both were opposed to the rate increase.

At the first public input hearing at 1:00 p.m., Gerald Servidio testified.² Mr. Servidio explained that the rate increase would create a hardship for him. He observed that inflation has caused prices to increase and that National Fuel appears to be a healthy company. He noted that the poverty rate in Erie County is very high and asked the Commission to consider a lower rate increase than the increase requested by the Company.

Vasant Balraj testified at the 6:00 p.m. public input hearing.³ He is the caretaker for his mother, Deokey Balraj. He explained that she is very elderly. He testified that if her rates increase it will be very difficult for him to keep her in her current housing. Like Mr. Servidio, he stated that the pressure on prices from inflation has caused his mother's rent to increase and food and other necessities are more expensive. He is concerned that he will be unable to provide his mother with healthy living conditions if her National Fuel rates are increased.

SETTLEMENT TERMS

The Parties have agreed to the settlement terms as set forth below. These terms are stated verbatim and for ease of reference retain the same paragraph numbers as they appear in the Settlement.

A. GENERAL

26. The following terms of this Settlement reflect a carefully balanced compromise of the Joint Petitioners' positions on various issues. The Joint Petitioners agree that the Settlement is in the public interest.

² Tr. 50-53.

³ Tr. 73-76.

B. REVENUE REQUIREMENT

27. The distribution rates set in this proceeding will be designed to produce increased distribution operating revenues of \$23.0 million annually based upon the level of operations for the twelve months ended July 31, 2024.

C. DISTRIBUTION SYSTEM IMPROVEMENT CHARGE (DSIC)

28. National Fuel intends to file for Commission approval of a DSIC. Assuming that the DSIC is approved, the initial DSIC will be calculated to recover the fixed costs of eligible property that has been placed in service during the three-month period ending one month prior to the effective date of the initial DSIC subject to the following two limitations:

a. No plant additions placed into service before August 1, 2024, (i.e., the end of the FPFTY) will be eligible for DSIC recovery; and

b. National Fuel will not be eligible to include plant additions in the DSIC until the total plant in service exceeds the level of \$781,263,000 as projected by National Fuel in this proceeding at July 31, 2024. See National Fuel Exhibit A – Rebuttal. The foregoing sentence is included solely for purposes of calculating the DSIC, and is not determinative for future ratemaking purposes of the projected additions to be included in rate base in an FPFTY filing.

29. For purposes of calculating its DSIC, National Fuel shall use the equity return rate for gas utilities contained in the Commission's most recent Quarterly Report (QER) on the Earnings of Jurisdictional Utilities and shall update the equity return rate each quarter consistent with any changes to the equity return rate for gas utilities contained in the most recent QER, consistent with 66 Pa.C.S. § 1357(b)(3), until such time as the DSIC is reset pursuant to the provisions of 66 Pa.C.S. § 1358(b)(1).

30. National Fuel will file an update to National Fuel Exhibit A – Revenue Requirement – FTY, Schedule C-2 no later than November 1, 2023, which will include actual capital expenditures, plant additions and retirements by month for the twelve months ending June 30, 2023. An additional update to National Fuel Exhibit A – Revenue Requirement – FPFTY, Schedule C-2 will be provided for actuals through July 31, 2024, no later than November 1, 2024.

In National Fuel's next base rate proceeding, the Company will prepare a comparison of its actual expenses and rate base additions for the twelve months ending July 31, 2024, to its projections in this case. However, it is recognized by Joint Petitioners that this is a "black box" settlement that is a compromise of the Joint Petitioners' positions on various issues.

D. EE PILOT PROGRAM

31. The Company's proposed EE Program and Rider are withdrawn.

E. LOW-MODERATE INCOME (LMI) DEMONSTRATION PROJECT

32. The Company's proposed LMI Demonstration Project is withdrawn.

F. TAX ISSUES

33. The state income tax rate in this proceeding will be set at 8.99%, and this percentage has been reflected in the Settlement revenue requirement in paragraph 27, supra. The Company will reflect subsequent state tax adjustments to the state income tax rate for the post-2024 tax years through the Company's State Tax Adjustment Surcharge (STAS), currently Tariff Gas – P.A. P.U.C. No. 9, page 157, or through future base rate proceedings.

34. National Fuel will be permitted to continue to use normalization accounting with respect to the benefits of the Internal Revenue Code Section 481(a) catch-up amount of the tax repairs deduction.

35. National Fuel will be permitted to continue to use flow through accounting with respect to current years deductions for repairs.

36. As explained in National Fuel Statement No. 12, the Company will reverse the regulatory asset and the offsetting regulatory liability related to the Repairs and Maintenance accounting method as further detailed on National Fuel Exhibit JAR-3.

37. As also explained in National Fuel Statement No. 12, the Company will reverse the state deferred tax liability, also related to

the Repairs and Maintenance accounting method, over a 20-year period.

38. Upon the effective date of the rates in the proceeding, National Fuel's TCJA Temporary Surcharge, currently Tariff Gas – P.A. P.U.C. No. 9, page 170, will cease, except that any remaining over/under collection will be passed back or collected from customers.

G. REVENUE ALLOCATION AND RATE DESIGN

39. The revenue allocation to each class at the net settlement increase of \$23.0 million is reflected in Appendix B. This revenue allocation is a “black box” agreement representing a compromise among the parties’ filed revenue allocation proposals and it does not reflect any agreement among the Joint Petitioners regarding the appropriate cost allocation methodology.

40. The fixed monthly customer charges for each customer class are set as follows:

- a. Residential - \$14.00.
- b. SCPA-LL - \$27.00.
- c. SCPA-UL - \$37.00.
- d. LCPA - \$151.00.
- e. SVIS - \$82.00.
- f. IVIS - \$252.00.
- g. LVIS - \$1,023.00.
- h. LIS - \$1,165.00.

H. WEATHER NORMALIZATION ADJUSTMENT (WNA)

41. The Company's proposed WNA Tariff Rider C is approved as filed and updated in rebuttal as a five-year pilot program, with the exception that the Company shall modify the originally proposed WNA to include a 3% dead band.⁴ The parties reserve the right to

⁴ National Fuel, I&E and OSBA support the WNA. OCA, CAUSE-PA and PWPTF do not oppose this provision of the Settlement, but do not join in supporting the WNA. All reporting referenced in Paragraph 42 will be served on I&E, OCA, OSBA, CAUSE-PA and PWPTF.

challenge the continuation of the WNA Pilot, or to propose changes thereto, in any future general rate increase proceeding or petition filed by the Company.

42. The Company shall submit two WNA reports per year which will provide the following information for each WNA month, by class:

- a. The number of bills to which the WNA applied (i.e., those bills falling outside the dead band of 3%);
- b. The total number of bills;
- c. The total volume adjustment of the WNA for the month;
- d. The total revenue adjustment of the WNA for the month;
- e. The normal calendar month weather (heating degree days); and
- f. The actual calendar month weather (heating degree days).

43. The Company will prepare and distribute materials to its customers to explain the function of the WNA and its impact on customer bills.

I. MISCELLANEOUS TARIFF PROVISIONS

44. Except as otherwise set forth in this Settlement, the revisions contained in Supplement No. 248 to National Fuel Tariff Gas – P.A. P.U.C. No. 9, as contained in Appendix A will be approved.

J. UNIVERSAL SERVICE AND LOW-INCOME CUSTOMER ISSUES

45. Prior to the Company's next Universal Services Advisory Committee (USAC) meeting in October 2023, National Fuel agrees to revise its policies, procedures, and training manuals related to victims of domestic violence to ensure they are in line with Chapter 56 of the Commission's regulations and applicable Commission guidance. National Fuel will clarify in its internal training materials that a victim of domestic violence with a qualifying court order, including an Emergency, Temporary, or Final Protection from

Abuse or any other court order showing clear evidence of domestic violence, will be informed of, and may avail themselves of, the protections of Chapter 56 subchapters L-V. At a minimum, National Fuel will clarify its policies, procedures, and related training materials to indicate that (1) these protections apply regardless of the relationship between the applicant or customer and the named defendant in the PFA or other court order, (2) a victim of domestic violence with a qualifying order will not be held liable for any debt accrued by a third party, and (3) a victim of domestic violence with a qualifying order is entitled to more flexible payment arrangements subject to the considerations described in 52 Pa. Code § 56.285

46. To occur at Company's next USAC meeting in October 2023, National Fuel agrees to present its revised training materials related to victims of domestic violence and solicit feedback. National Fuel will consider any feedback or suggestions and will explain why any recommendations were rejected. The results will be discussed at the subsequent USAC meeting.

47. To occur at Company's next USAC meeting in October 2023, National Fuel will, in collaboration with the parties to this proceeding, enhance public-facing policies and procedures related to customers who have PFAs or other court orders containing clear evidence of domestic violence. National Fuel will consider any feedback or suggestions and will explain why any recommendations were rejected. The results will be discussed at the subsequent USAC meeting.

48. Within 30 days of the Commission's approval of this Settlement, the Company agrees to accept identification documents issued by foreign governments as acceptable identification to establish service where they include: the applicant's full name; a photograph; and an expiration date that has not expired as of the date of application. The Company further agrees to develop a list of acceptable documentation to prove identity, including but not limited to a driver's license, student identification, employment identification, state-issued identification, passport, and identification issued by a foreign government. The Company will also revise its training materials and internal policies and procedures to clarify that an applicant is not required to provide a Social Security Number for themselves or other household members as a condition to establishing service.

49. To occur at Company's next USAC meeting in October 2023, National Fuel agrees to convene the parties to this proceeding to review and make additional appropriate revisions to its list of

identification acceptable to establish service, specifically examining barriers to establishing service faced by low-income and certain underserved communities – including immigrants and refugees. National Fuel will consider any feedback or suggestions and will explain why any recommendations were rejected. The results will be discussed at the subsequent USAC meeting.

50. To occur at Company’s next USAC meeting in October 2023, National Fuel will in collaboration with its USAC, enhance detailed public-facing materials that explain National Fuel’s identification requirements to establish service and present these materials to the parties to this proceeding. National Fuel will consider any feedback or suggestions and will explain why any recommendations were rejected. The results will be discussed at the subsequent USAC meeting.

51. National Fuel will review all customer accounts with a security deposit each month to determine whether that account is a low-income household, if it is determined that an account is held by a low-income household, the security deposit will be returned to the customer within 30 days.

52. Identification of Low Income Households. As a condition of this Settlement, National Fuel agrees to the following, related to the identification of low-income households in its service territory:

a. National Fuel will categorize its customers as confirmed low-income if it obtains information reasonably indicating the customer is low-income.

b. National Fuel will review its list of confirmed low-income indicators with its USAC to consider whether additional confirmed low-income indicators are feasible and reasonable.

c. To occur at Company’s next USAC meeting in October 2023, National Fuel will, in collaboration with the parties to this proceeding, discuss measurable outcome objectives/metrics aimed at increasing the number of low-income customers identified and increasing enrollment of low-income customers into customer assistance programs. National Fuel will consider any feedback or suggestions and will explain why any recommendations were rejected. The results will be discussed at the subsequent USAC meeting.

d. National Fuel will maintain the confirmed low-income designation on customer accounts for at least five years.

53. Low-Income Residential Assistance (LIRA) Program. As a condition of this Settlement, National Fuel agrees to the following, related to its LIRA Program:

a. National Fuel will work with members of its USAC to develop a survey of non-LIRA Low-Income Home Energy Assistance Program (LIHEAP) recipients to better understand these LIHEAP recipients have not enrolled in LIRA.

b. National Fuel will work with its USAC to develop a simplified process for non-LIRA LIHEAP recipients to enroll in its Customer Assistance Program (CAP), such process to be developed and implemented within four months after the initial launch date for National Fuel's percentage of income plan (PIP) design.

54. Low-Income Usage Reduction Program (LIURP). As a condition of this Settlement, National Fuel agrees to the following, related to LIURP:

a. National Fuel will improve tracking of LIURP deferrals and rejections by customer segment to better understand the barriers to enrollment.

b. National Fuel will commission an independent, third-party LIURP evaluation and needs assessment to help identify additional areas for improvement in the delivery and reach of its LIURP services. This evaluation and needs assessment will be funded through, and not to exceed, the LIURP budget.

c. National Fuel will develop a plan to fully expend its LIURP budget each year, informed by the results of its third-party evaluation and needs assessment performed pursuant to paragraph 54.b., as well as input from National Fuel's USAC including expansion of the Low-Consumption Low-Income Usage Reduction Program (LC-LIURP).

d. National Fuel agrees to increase its annual LIURP budget by \$91,000. Any unused funds from a program year

will be rolled over and added to LIURP funds for the subsequent program year.

e. Subject to contractor availability, National Fuel will make best efforts to increase LIURP and Emergency Repair and Replacement Program (ERRP) job totals to 275 per year.

55. Neighbor For Neighbor (NFN). As a condition of this Settlement, National Fuel agrees to the following, related to NFN:

a. National Fuel will provide a warm referral for all potentially eligible payment-troubled confirmed low-income customers to NFN.

b. National Fuel will review the maximum grant amount available through NFN.

c. The Company will increase its annual contributions to the NFN fund from \$67,000 to \$92,000. Any unused funds from a program year will be rolled over and added to NFN funds for the subsequent program year.

The Settlement also included the following Terms and Conditions:

61. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. If the Commission modifies the Settlement, then any Joint Petitioner may elect to withdraw from this Settlement and may proceed with litigation and, in such event, this entire Settlement shall be void and of no effect. Such an election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all parties within five (5) business days after the entry of an Order modifying the Settlement.

62. This Settlement is proposed by the Joint Petitioners to settle all issues among them in the instant proceeding. If the Settlement is not approved, the Joint Petitioners reserve their respective rights to conduct further hearings, including further cross-examination, and briefing. The Settlement is made without any admission against, or prejudice to, any position which any Joint Petitioner may adopt in the event of any subsequent litigation of this proceeding or in any other proceeding.

63. The Joint Petitioners acknowledge and agree that this Settlement, if approved, shall have the same force and effect as if the Joint Petitioners had fully litigated this proceeding resulting in

the establishment of rates that are Commission-made, just and reasonable.

64. The Joint Petitioners acknowledge that this Settlement reflects a compromise and does not necessarily reflect any Party's position with respect to any issues raised in this proceeding. The Joint Petitioners agree that this Settlement shall not constitute or be cited as precedent in any other proceeding, except to the extent required to implement this Settlement.

65. This Settlement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner which is fair and reasonable. The Settlement is presented without prejudice to any position which any of the parties may have advanced and without prejudice to the position any of the parties may advance in the future on the merits of the issues in future proceedings except to the extent necessary to effectuate the terms and conditions of the Settlement. This Settlement does not preclude the parties from taking other positions in proceedings of other public utilities under Section 1308 of the Public Utility Code, 66 Pa.C.S. § 1308, or any other proceeding.

LEGAL STANDARDS

The purpose of this investigation is to establish rates for National Fuel's customers that are just and reasonable pursuant to Section 1301 of the Public Utility Code.⁵ Section 1301(a) of the Code requires [e]very rate made, demanded, or received by any public utility ... shall be just and reasonable, and in conformity with [the] regulations or orders of the [C]ommission.⁶ Pursuant to the just and reasonable standard, a utility may obtain a rate that allows it to recover those expenses that are reasonably necessary to provide service to its customers, as well as a reasonable rate of return on its investment.⁷ There is no single way to arrive at just and reasonable rates. The Commission has broad discretion in determining whether

⁵ 66 Pa.C.S. § 1301.

⁶ 66 Pa.C.S. § 1301(a).

⁷ *City of Lancaster Sewer Fund v. Pa. Pub. Util. Comm'n*, 793 A.2d 978, 982 (Pa. Cmwlth. 2002).

rates are reasonable and to decide what factors it will consider in setting or evaluating a utility's rates.⁸

The Commission encourages parties in contested on-the-record proceedings to settle cases.⁹ The Commission has explained that parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest.¹⁰ To approve a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest.¹¹ The Commission has concluded that settlements eliminate the time, effort, and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission's decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails. For a unanimous settlement, the Joint Petitioners share the burden of proving that the terms and conditions of the Settlement are supported by substantial evidence and are in the public interest.¹²

This Settlement is a "black box" settlement. This means that the Settlement does not specifically address each of the adjustments to rate base, revenue, expenses, or rate of return, nor does the Settlement resolve all of the disputes related to those items. The Commission has approved "black box" settlements in contentious base rate proceedings:

We have historically permitted the use of "black box" settlements as a means of promoting settlement among the parties in contentious base rate proceedings. See, *Pa. PUC v.*

⁸ *Pa. Publ. Util. Comm'n v. City of Bethlehem - Water Dep't*, Docket No. R-2020-3020256 (Opinion and Order entered April 15, 2021) (*City of Bethlehem*) (citing *Popowsky v. Pa. Pub. Util. Comm'n*, 683 A.2d 958 (Pa. Cmwlth. 1996). See also *Popowsky v. Pa. Pub. Util. Comm'n*, 665 A.2d 808 (Pa. 1995) (The Commission possesses a great deal of flexibility in its ratemaking function.).

⁹ See 52 Pa. Code § 5.231.

¹⁰ *Pa. Pub. Util. Comm'n v. MXenergy Elec. Inc.*, Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013).

¹¹ *Pa. Pub. Util. Comm'n, et al. v. UGI Utils., Inc. – Gas Division*, Docket No. R-2015-2518438 (Order entered Oct. 14, 2016); *Pa. Pub. Util. Comm'n v. CS Water & Sewer Assoc.*, 74 Pa.P.U.C. 767 (1991).

¹² *City of Bethlehem*, at 13.

Wellsboro Electric Co., Docket No. R-2010-2172662 (Final Order entered January 13, 2011); *Pa. PUC v. Citizens' Electric Co. of Lewisburg, PA*, Docket No. R-2010-2172665 (Final Order entered January 13, 2011). Settlement of rate cases saves a significant amount of time and expense for customers, companies, and the Commission and often results in alternatives that may not have been realized during the litigation process. Determining a company's revenue requirement is a calculation involving many complex and interrelated adjustments that affect expenses, depreciation, rate base, taxes and the company's cost of capital. Reaching an agreement between various parties on each component of a rate increase can be difficult and impractical in many cases.¹³

DISCUSSION OF THE SETTLEMENT

All of the Parties support the Settlement as a whole. Not every Party addressed every element of the Settlement in their Statements in Support, but instead focused on the elements that were important to their decision to support the Settlement or pertained to areas where they submitted testimony.

Revenue Requirement (¶ 27)

The Joint Petitioners agreed to an increase in National Fuel's base rate revenues of \$23.0 million based upon the level of operations for the twelve months ended July 31, 2024. This increase in revenue is less than the originally requested \$28.1 million increase. This element of the Settlement is in the "black box."

National Fuel supports the revenue requirement in the Settlement because it will enable the Company to continue to operate a safe and reliable system. Specifically, the settled revenue increase is essential to National Fuel's continued ability to attract capital on reasonable terms and provide safe and reliable service to customers. While the company has been able to operate a safe and reliable system, provide high-quality customer service, and earn a reasonable

¹³ *Pub. Util. Comm'n v. Peoples TWP, LLC*, Docket No. R-2013-2355886 (Opinion and Order entered December 19, 2013).

rate of return since its last base rate case in 2006, National Fuel explained that the Company has recently experienced the effects of significant cost inflation, which is driving increases in labor and other costs. The Company is also accelerating its infrastructure replacement and system modernization investments to enhance reliability and safety, and also reduce emissions. The Company's current rates do not provide it with a reasonable opportunity to earn a fair rate of return on its investments made to serve the public in the provision of safe and reliable natural gas distribution service.¹⁴

I&E agrees that the settled revenue increase is in the public interest. The \$23.0 million settlement increase falls within the range of the Parties' overall revenue requirement proposals, is just and reasonable, in the public interest, and supported by substantial evidence.¹⁵ In consideration of the extensive testimony presented by all of the Parties to this proceeding, I&E fully supports the negotiated level of overall base rate revenue increase as a full and fair compromise that provides National Fuel, the Joint Petitioners, affected ratepayers, and the Commission with resolution of the overall revenue increase, all of which is in the public interest. According to I&E, the Commission should approve the "black box" \$23.0 million revenue requirement increase without modification.

OCA concurs, representing that based on OCA's analysis of the Company's filing and discovery responses received, the rate increase under the proposed Settlement represents a result that would be within the range of likely outcomes in the event of full litigation of the case. OCA takes the position that the increase is appropriate and, when accompanied by other important conditions contained in the Settlement, yields a result that is just and reasonable. For this reason, the OCA submits that the negotiated revenue requirement should be accepted by the Commission as in the public interest.

OSBA observes that its expert witness, Kevin Higgins, testified that National Fuel's original revenue increase request should be significantly reduced. OSBA further states

¹⁴ National Fuel St. 1 at 6-7.

¹⁵ I&E St. 1-SR at 3 (\$19.683 million); OCA St. 1-SR at 6 (\$15.373 million).

that the Settlement proposes to reduce National Fuel's requested increase and therefore, in OSBA's view, the Settlement represents a just and reasonable resolution of this issue.

CAUSE-PA initially opposed a rate increase of any amount in light of the difficulty low-income households in National Fuel's service territory already have in connecting to and maintaining service. However, viewing the Settlement as a whole, and in light of the many varied interests, CAUSE-PA takes the position that the revenue increase included in the proposed Settlement is reasonable.

In sum, through negotiations, the Joint Petitioners were able to reach a compromise within a range of their competing litigation positions. The \$23.0 million settlement increase falls within the range of the Joint Petitioner's overall revenue requirement proposals, is just and reasonable, in the public interest, and supported by substantial evidence. While the statutory advocates each recommended revenues of less than \$23.0 million, each represents that in the context of the Settlement as a whole, the settlement revenue is a reasonable compromise. Thus, the Commission should approve the \$23.0 million revenue requirement increase without modification.

Distribution Improvement Charge (DSIC) (¶¶ 28-30)

National Fuel intends to request the Commission to approve a DSIC. The Settlement includes provisions for the pending DSIC petition.¹⁶ National Fuel agrees that the initial DSIC will be calculated to recover the fixed costs of eligible property that has been placed in service during the three-month period ending one month prior to the effective date of the initial DSIC, with the following two limitations. The first limitation is that no plant additions placed into service before August 1, 2024, (i.e., the end of the fully projected future test year ending July 31, 2024) will be eligible for DSIC recovery. The second limitation is that the

¹⁶ The Commission approved National Fuel's Long Term Infrastructure Improvement Plan on December 22, 2022. Docket P-2022-3034957.

Company will not be eligible to include plant additions in the DSIC until the total plant in service exceeds the level of \$781,263,000.¹⁷

National Fuel explains that the limitations contemplated by the Settlement will provide National Fuel a reasonable opportunity to recover its capital costs incurred to repair, improve, or replace its aging distribution infrastructure that is placed in service between base rate cases, which, in turn, provides customers with enhanced gas service safety and reliability benefits. While the provision recognizes that National Fuel has not yet filed for and received a DSIC, the limitations set forth in the provision are similar to other settlement provisions the Commission has adopted in recent proceedings.¹⁸ For these reasons, National Fuel submits that this settlement provision should be approved without modification.

The Settlement further provides that, National Fuel shall use the equity return rate for gas utilities contained in the Commission's most recent Quarterly Report on the Earnings of Jurisdictional Utilities and shall update the equity return rate each quarter consistent with any changes to the equity return rate for gas utilities contained in the most recent Quarterly Earnings Report, consistent with 66 Pa.C.S. § 1357(b)(3), until such time as the DSIC is reset pursuant to the provisions of 66 Pa.C.S. § 1358(b)(1). Further, NFG will file an update to NFG Exhibit A - Revenue Requirement - FTY, Sch. C-2 no later than November 1, 2023, which will include actual capital expenditures, plant additions and retirements by month for the twelve months ending June 30, 2023. An additional update to NFG Exhibit A - Revenue Requirement - FPFTY, Sch. C-2 will be provided for actuals through July 31, 2024, no later than November 1, 2024.

According to National Fuel, this Settlement provision is in the public interest because it specifies, as required by the Commission, a mechanism for determining the return on equity to be used in future DSIC calculations. The ROE mechanism for the Settlement is

¹⁷ See 66 Pa.C.S. § 1358.

¹⁸ See, e.g., *Pa. Pub. Util. Comm'n v. UGI Utils., Inc. – Gas Division*, Docket No. R-2021-3030218 (Opinion and Order entered Sept. 15, 2022); *Pa. Pub. Util. Comm'n v. Duquesne Light Co.*, Docket No. R-2021-3024750 (Opinion and Order entered Dec. 16, 2021); *Pa. Pub. Util. Comm'n v. Columbia Gas of Pa., Inc.*, Docket No. R-2014-2406274 (Opinion and Order entered Dec. 10, 2014).

consistent with other DSIC's approved by the Commission where the base rate ROE is part of a black box settlement.

I&E supports the inclusion of these Settlement terms relating to National Fuel's future DSIC petition. I&E recommended that the Company provide the Bureau of Investigation and Enforcement and the Office of Consumer Advocate with an update to National Fuel Exhibit A - Revenue Requirement - FTY, Sch. C-2 no later than November 1, 2023. I&E also recommended an additional update to National Fuel Exhibit A - Revenue Requirement FPFTY, Sch. C-2 should be provided for actuals through July 31, 2024, no later than November 1, 2024.¹⁹ Through negotiation, National Fuel agreed to adopt these reporting requirements. This will enable the Parties and interested stakeholders to track the Company's actual capital expenditures, plant additions, and retirements for the FPFTY and evaluate to what extent the actual figures match the Company's projections in this case. I&E specifically observes that these reporting terms provide National Fuel, the Joint Petitioners, the Commission, and the ratepayers with regulatory certainty and a resolution which is in the public interest. Accordingly, I&E states that the Commission should approve this Settlement provision without modification.

Neither OCA nor OSBA took a position regarding the terms of the Settlement that pertain to National Fuel's future DSIC. I note that these terms do not appear to infringe on the Commission's authority to thoroughly review the Company's DSIC petition when it is filed. Further, the Commission has approved similar terms in the DSIC cases cited by National Fuel in its statement supporting the Settlement. Therefore, these terms of the Settlement should be approved in the context of approving the Settlement as a whole.

EE Pilot Program (¶ 31)

As a part of its initial filing in this case, National Fuel proposed an EE Pilot Program. The EE Pilot Program was an equipment replacement program, under which National Fuel would offer equipment replacement rebate incentives for single-family and multi-family

¹⁹ I&E St. 4 at 3-4.

residential dwellings, to encourage the installation of high efficiency appliances and thermostats by its customers.²⁰

I&E and OCA criticized the EE Pilot Program for various reasons, including the impact on the requested rate increase for the first time in many years, the proposed structure of the program and uncertainty regarding the success of the program.²¹ CAUSE-PA raised concerns about the proposed Energy Efficiency Program, as the rebate structure of the program would place it out of reach for the average low-income customer and recommended that revisions to the EE Pilot Program should occur as a condition of its approval.²²

The Settlement provides that National Fuel's proposed EE Program and Rider are withdrawn. I&E, OCA and CAUSE-PA agree that this Settlement provision is a compromise of the Parties' competing litigation positions.

The OCA specifically noted that withdrawing the program will ensure that residential customers will not fund the EE Pilot outside of general rates when there is no certainty about the effectiveness of the program. According to OCA, the funding for an energy efficiency program should be collected through base rates, rather than through a separate rider allocated only to the residential class. OCA supports the Settlement term withdrawing the EE Pilot as reasonable and in the public interest because it addresses OCA's concern that National Fuel did not provide sufficient information about the EE Pilot to justify its expense.

CAUSE-PA also supports the withdrawal of the EE Pilot. As Mr. Geller, CAUSE-PA's witness, described in his direct testimony, as a practical matter, low-income households would not have the resources to participate in the proposed EE Pilot Program with

²⁰ National Fuel St. 18 at 19-32.

²¹ I&E St. 1 at 4-9; OCA St. 4 at 1-18.

²² CAUSE-PA St. 1 at 48-54.

the promise of an eventual partial rebate.²³ CAUSE-PA asserts that this provision of the proposed Settlement is in the public interest and should be approved without modification.

While National Fuel supports EE Programs and believes that they are in the public interest, the Company compromised on this issue in order to achieve the Settlement.

Low-Moderate Income (LMI) Demonstration Project (¶ 32)

National Fuel's initial filing included the proposed LMI Demonstration Project.²⁴ The Company explained that the purpose of the LMI Demonstration Project was to help alleviate the upfront costs of connecting with the natural gas network, as a means of encouraging the installation of natural gas fired equipment. National Fuel proposed to include the \$125,000 per year, or \$375,000 total, recovered over three years, as an O&M expense with \$125,000 to be recovered in base rates in the FPFTY. According to National Fuel, the LMI Demonstration project was anticipated to result in savings for customers who converted from propane or heating oil to natural gas and to reduce CO₂ emissions.

I&E opposed the LMI Demonstration Project. In I&E's view, the program would result in unnecessary increases to residential customers' bills at a time when those customers are facing increased household costs due to the current inflationary trend.²⁵ According to I&E, the elimination of the LMI Demonstration Project is in the public interest.

The OCA recommended several modifications to the LMI Demonstration Project in direct testimony to clarify what information National Fuel sought to gain through this project, who would be served by this project, and how effective this project would be at increasing customer efficiency.²⁶ CAUSE-PA also raised concerns about the ability of low-income

²³ See CAUSE-PA St. 1 at 49-51.

²⁴ National Fuel St. 1 at 32-35.

²⁵ I&E St. 1 at 9-13.

²⁶ OCA St. 5 at 55-60.

households to benefit from the program and recommended that revisions to the LMI Demonstration Project should occur as a condition of its approval.²⁷

By withdrawing this proposal, the concerns of I&E, OCA and CAUSE-PA regarding this program are moot. The Company's proposal to withdraw the LMI Demonstration in Settlement is reasonable given the positions of the Parties.

Tax Issues (¶¶ 33-38)

The Settlement resolves, clarifies and memorializes various tax issues that were raised in this proceeding.

State Income Tax (¶ 33). I&E initially raised a question as to whether a stub period of overcollection will occur based on the discrepancy between the Company's submitted tax calculations using a 9.99% state income tax rate that was in effect prior to January 1, 2023, and the reduced state income tax rate of 8.99% that is currently in effect.²⁸

The Company clarified that the Company is not over-recovering state income tax from January 1, 2023, until the effective date of new rates in this proceeding because the Company is a fiscal year taxpayer. National Fuel's tax years run from October 1 through September 30.²⁹ I&E considered the Company's assertion and reviewed the applicable statute regarding the reduction in the state income tax rate. I&E accepted that the Company's reduced state income tax rate of 8.99% will not go into effect until after new rates are in effect for this proceeding and no stub period over collection of state income tax will occur.³⁰

²⁷ CAUSE-PA St. 1 at 54-59.

²⁸ I&E St. 1 at 15.

²⁹ National Fuel St. 12-R at 2-3.

³⁰ I&E St. 1-SR at 11.

The Settlement reflects the Company's and I&E's efforts to resolve this issue and clarifies that the Company's filing utilized the correct state income tax rate to calculate its state income tax expense. Furthermore, this provision of the Settlement correctly reflects the gradual reduction in the Pennsylvania state corporate net income tax rate over nine years, as reflected in House Bill 1342.³¹ This provision is in the public interest and should be approved.

Tax Repairs (§§ 34-37). In its filing, National Fuel proposed to continue to use normalization accounting with respect to the benefits of the Internal Revenue Code Section 481(a) catch-up amount of the tax repairs deduction.³² In addition, National Fuel also proposed to be permitted to continue to use flow through accounting with respect to current years deductions for repairs.³³ It also proposed to reverse the regulatory asset and the offsetting regulatory liability related to the Repairs and Maintenance accounting method.³⁴ And finally, the Company proposed to reverse the state deferred tax liability, also related to the Repairs and Maintenance accounting method, over a 20-year period.³⁵ The Company's proposals were not opposed by any party.³⁶

Paragraphs 34-37 of the Settlement memorialize and adopt the Company's proposals with respect to the tax repairs. According to National Fuel, the Company has fully justified its proposals related to the tax repairs election.

These provisions of the Settlement are reasonable, in the public interest, and should be approved.

³¹ National Fuel St. 12-R at 2.

³² National Fuel St. 12 at 9-11.

³³ National Fuel St. 12 at 9-11.

³⁴ National Fuel St. 12 at 9-11; National Fuel Exhibit JAR-3.

³⁵ National Fuel St. 12 at 9-11.

³⁶ National Fuel St. 12-R at 3.

Tax Cuts and Jobs Act (TCJA) Temporary Surcharge (§38). The Settlement also memorializes the Company's treatment of the TCJA Temporary Surcharge. Paragraph 38 of the Settlement provides that upon the effective date of the rates in the proceeding, National Fuel's TCJA Temporary Surcharge, currently Tariff Gas – P.A. P.U.C. No. 9, page 170, will cease, except that any remaining over/under collection will be passed back or collected from customers. Under National Fuel's currently effective tariff, the TCJA Temporary Surcharge provides:

[t]he total credits provided to customers through this negative surcharge will be reconciled with actual differences in federal income tax expense of a pre- and post-TCJA basis and will remain in place until the Company files and the Commission approves new base rates for the utility pursuant to Section 1308(d) that include the effects of the TCJA tax rate changes.

(National Fuel Exhibit F – Current Tariff). Pursuant to the terms of the tariff, and the Commission's prior May 18, 2018, order at Docket No. R-2018-3000527, this temporary surcharge will no longer be in place once the Company files and the Commission approves new base rates. Therefore, this settlement term is also in the public interest.

Revenue Allocation and Rate Design (§§ 39-40)

The revenue allocation agreed to by the Joint Petitioners is set forth in detail in Appendix B of the Joint Petition for Settlement.

The allocation of revenue among a utility's various rate classes, while informed by science and engineering, also involves consideration of ratemaking policy and principles of gradualism. The application of science and policy to the allocation of a revenue increase is within the Commission's discretion: There is no set formula for determining proper ratios among the rates of different customer classes. What is reasonable under the circumstances, the proper difference among rate classes, is an administrative question for the Commission to decide.³⁷

³⁷ *Peoples Nat. Gas Co. v. Pa. Pub. Util. Comm'n*, 409 A.2d 446 (Pa. Cmwlth. 1979).

The Commission recently explained the interplay among ratemaking methodologies and the consideration of other factors to set just and reasonable rates:

These norms, or traditional ratemaking methodologies, are used to determine a utility's cost of providing service, or its revenue requirement, and to determine appropriate rate structure, which includes, among other things, the appropriate allocation of the revenue requirement to various customer classes. However, while these ratemaking norms provide a rational and methodical way to analyze and determine the utility's cost of service, they also permit the consideration and weighing of important factors or principles in setting just and reasonable rates, such as quality of service, gradualism, and rate affordability.

We acknowledge that there are several factors that must be considered when designing a rate recovery proposal, one of which is the concept of gradualism and affordability, which are classic small water company challenges faced by many similar-sized utilities across the nation. However, while affordability is permitted to be considered, it is but one of many factors to be considered and weighed by the Commission in determining a utility's rates. The rate increase reflects the business challenges the Company currently faces, including required investments in the repair/replacement or improvement of its distribution systems, including acquired troubled water utilities' distribution system; and the high costs associated with maintaining a distribution system necessary to provide safe and reliable water and wastewater service within the Commonwealth.^{38]}

National Fuel, I&E, OCA and OSBA each presented an analysis of how National Fuel's cost of service should be calculated, and how the revenue increase should be distributed among each of National Fuel's rate classes.³⁹ These Joint Petitioners agreed to disagree regarding the method for determining the cost of service and allocation of revenue, but were able to negotiate an allocation of revenue that is consistent with the goals of each Joint Petitioner's originally proposed allocation. According to the Joint Petitioners, the revenue allocation in the

³⁸ *Pa. Pub. Util. Comm'n v. Community Utils. Inc.*, Docket No. R-2021-3025206, pp. 65-66 (Opinion and Order entered Jan. 13, 2022)(citations omitted).

³⁹ National Fuel St. 19; I&E St. 5; OCA St. 3; OSBA St. 1.

Settlement will move all classes closer to the cost of service in a manner acceptable to all of the Parties.⁴⁰

National Fuel supports the revenue allocation in the Settlement and submits that the Settlement's proposed revenue allocation is fully consistent with the court precedent⁴¹ and other relevant precedent regarding revenue allocation.

I&E agrees, and emphasizes that in their negotiations, the Joint Petitioners considered the application of relative rate of return concepts as well as scale back and rate shock concepts. After extensive negotiations among the Joint Petitioners and in consideration of all of the record evidence presented, I&E fully supports the revenue allocation and rate design settlement terms as a full and fair compromise that provides National Fuel, the Joint Petitioners, ratepayers, and the Commission with regulatory certainty and resolution of the revenue allocation and rate design, all of which is in the public interest.

OCA supports the Settlement revenue allocation because the proposed allocation achieves a fairer balance than what was originally proposed by the Company by moving the residential class closer to matching the system average increase, while distributing the expenses of mains investments among those rate classes most responsible for them. The OCA submits that, under the terms of the Settlement, the portion of the revenue requirement increase allocated to the residential customer class of 70.6% is a significant improvement from the 77% allocated to the residential class in the Company's initial revenue allocation proposal. OCA submits that the revenue allocation in the Settlement is in the public interest and should be accepted by the Commission.

OSBA, noting that it supported National Fuel's initial cost of service study, explained that its expert witness, Kevin Higgins, proposed a middle ground approach. OSBA

⁴⁰ See Joint Petition, Appendix B.

⁴¹ *E.g., Lloyd v. Pa. Pub. Util. Comm'n.*, 904 A.2d 1010 (Pa. Cmwlth. 2006) (*Lloyd*).

supports the revenue allocation agreed upon in the Settlement because the Settlement closely reflects the middle ground revenue allocation proposed by Mr. Higgins.

The Settlement also presents the compromise of the Joint Petitioners regarding the fixed customer charges initially proposed by National Fuel. The Company originally proposed to increase the base rate residential customer charge from \$12.00 per month to \$18.00 per month.⁴² I&E recommended the base rate residential customer charge be increased to \$16.00 per month.⁴³

OCA, CAUSE-PA, and PWPTF raised concerns regarding the impact of the proposed increase in fixed charges on residential and low-income customers. OCA opposed any increase to the customer charge because an increased customer charge would deter customers from conserving energy and remove their ability to control a substantial part of their monthly bills. Additionally, increasing the residential customer charge would have a particularly adverse impact on low-income customers. CAUSE-PA and PWPTF echoed these concerns.

The Joint Petitioners were able to resolve this issue through settlement by agreeing to a residential customer charge of \$14.00 per month. The Company believes this charge represents a fair compromise among the competing proposals of the various Parties.

OCA states that the Settlement provides a more modest increase of the current residential customer charge and a lower overall bill increase for the average residential heating customer than that which was originally proposed by the Company in its filing. The \$2.00 increase to the fixed customer charge will help customers maintain a greater ability to control a portion of their bill through energy conservation than they would have if the originally proposed \$6.00 increase had been implemented.

⁴² National Fuel Exhibit JDT-3.

⁴³ I&E St. 5 at 15-17.

CAUSE-PA also supports this resolution because limiting the increase of the fixed customer charge will protect the ability of low-income households to lower their utility costs by reducing consumption and preserve LIURP's ability to effectively reduce customer bills and improve payment behavior.⁴⁴ Thus, CAUSE-PA asserts that this provision of the proposed Settlement is just, reasonable, and in the public interest, and should be approved without modification.

National Fuel also originally proposed increases to all other non-residential customer charges.⁴⁵ I&E recommended increases to certain non-residential customer charges, and maintaining others at existing levels.⁴⁶ Ultimately, the monthly customer charges set by paragraph 39 of the Settlement adopt I&E's position or the average of I&E's position and the Company's filed position.⁴⁷

The overall allocation of revenue and rate design contemplated by the Settlement reflects a gradual increase in rates over the course of the FPFTY, moves all customer classes toward the overall cost of service, and strikes a reasonable balance between the interests of customers and the Company. For these reasons, the revenue allocation and rate design are just and reasonable and should be approved as reflected in the Settlement.

Weather Normalization Adjustment (WNA) (¶¶ 41-43)

The Company originally proposed a WNA mechanism that adjusts billings on a monthly billing basis as the bill is being calculated.⁴⁸ National Fuel witness Mr. John Taylor testified that a WNA mechanism is designed to adjust a customer's bill due to variations from

⁴⁴ CAUSE-PA St. 1 at 45.

⁴⁵ National Fuel Exhibit JDT-3.

⁴⁶ I&E St. 5 at 2-37; I&E St. 5-SR at 2-19.

⁴⁷ OSBA did not specifically address the non-residential customers charges in its statement in support.

⁴⁸ See National Fuel St. 19 at 2-3, 30-34.

normal weather in order to have the bill reflect normal weather conditions.⁴⁹ According to National Fuel, WNAs reduce the amount of variation in both customer bills and utility revenues by making a compensating adjustment for the difference between actual and normal weather.⁵⁰ National Fuel took the position that the proposed WNA aligned with the Commission's Statements of Policy outlined in the alternative rate making Docket. No. M-2015-2518883.⁵¹

Other Parties either recommended modifications to the proposed WNA or opposed it. Specifically, I&E recommended that the WNA be approved, subject to the condition that it include a 3% dead band.⁵² OSBA argued that the originally proposed WNA should only be an opt-in program.⁵³

The Settlement provides for the approval of the Company's proposed WNA Tariff Rider C as a five-year pilot program. The Company agreed to modify the originally proposed WNA to include a 3% dead band. In addition, the Settlement also establishes certain reporting requirements that the Company must satisfy as a part of the pilot.

I&E and OSBA join the Settlement regarding the WNA. I&E supports the terms because the WNA includes the 3% deadband recommended by I&E. According to I&E, the deadband is consistent with the Commission's approval of a similar WNA for Columbia Gas.⁵⁴ OSBA supports the WNA terms because it includes the deadband. OSBA also supports the reporting requirements and notes that the Settlement preserves OSBA's ability to oppose the WNA in future base rate proceedings.

⁴⁹ National Fuel St. 19 at 30.

⁵⁰ National Fuel St. 19 at 30-31.

⁵¹ National Fuel St. 19 at 38-42.

⁵² I&E St. 4 at 7.

⁵³ OSBA St. 1 at 10-13.

⁵⁴ See *Pa. Pub. Util. Comm'n v. Columbia Gas of Pa., Inc.*, Docket No. R-2020-3018835 (Opinion and Order entered Feb. 19, 2021).

OCA, CAUSE-PA and PWPTF all opposed the WNA, raising concerns about the impact of the proposed mechanism on low-income consumers.⁵⁵ Mr. Geller, CAUSE-PA's witness, explained that a WNA, such as the one National Fuel proposed, results in higher charges for residential consumers and shifts all risk of changing weather conditions and temperature extremes from utilities onto consumers.⁵⁶ Mr. Geller recommended that the WNA be rejected. Similarly, OCA witness Jerome D. Mierzwa recommended that the WNA be rejected, but stated that if the WNA is approved, National Fuel should be required to implement a 3% deadband.⁵⁷

OCA, CAUSE-PA and PWPTF do not join in the WNA settlement terms, but have agreed not to oppose these terms which permit the WNA as a pilot program. These Parties agreed not to oppose the inclusion of the WNA in the interests of achieving a broader settlement, particularly in regard to the universal service provisions discussed below.

OCA also raised concerns related to customer education and outreach regarding the proposed WNA.⁵⁸ National Fuel explained that it is developing a communication plan to educate customers about the WNA mechanism, which included pre-implementation education and outreach, as well as continuing monitoring of customer feedback and modifications to its plan based on feedback received.⁵⁹ The Company also provided an example of how the WNA will appear on a customer's bill, which included a plain language definition of the WNA.⁶⁰ This provision of the Settlement ensures that National Fuel prepares and provides customers with information that they can use to understand the WNA and its impact, and that National Fuel can review this feedback to update or revise informational materials as needed.

⁵⁵ OCA St. 3 at 40-42; OSBA St. 1 at 10-13; CAUSE-PA St. 1 at 45-48.

⁵⁶ CAUSE-PA St. 1 at 45-48.

⁵⁷ OCA St. 3 at 43.

⁵⁸ OCA St. 4 at 14.

⁵⁹ National Fuel St. 19-R at 62-63.

⁶⁰ National Fuel Exhibit JDT-19-R-B-2.

The Settlement terms regarding the WNA should be approved. The Settlement provides for the implementation of a WNA that balances the benefits and goals of the Company's initial proposal, with other Parties' positions regarding the application of a dead band and the duration of its implementation. Implementing the Company's proposed WNA as a pilot program with specific reporting requirements will allow stakeholders an opportunity to re-evaluate the WNA in the future based off the information provided by the Company. The adoption of the proposed WNA as a pilot program with a 3% dead band is in the public interest and should be approved.

Low-Income Customer Issues and Universal Service

National Fuel did not propose any changes regarding the administration or services provided by its Universal Service Programs (USP) and low-income customer assistance programs in this distribution base rate proceeding. Rather, the Company's 2022-2026 Universal Service and Energy Conservation Plan (USECP) at Docket No. M-2021-3024935 was initially submitted to the Commission on April 1, 2021, and subsequently approved as modified on December 22, 2022.

However, CAUSE-PA, OCA and PWPTF raised concerns about certain aspects of National Fuel's procedures regarding victims of domestic violence and identification requirements to establish residential service and other issues related to universal service. These Parties also identified issues related to specific National Fuel low-income programs. National Fuel takes the position that the universal service issues raised by OCA, CAUSE-PA and PWPTF are more appropriately addressed in its next triennial USP filing. However, National Fuel states that the Settlement represents the results of the Joint Petitioners' extensive settlement discussions and good-faith compromises. In view of reaching a resolution of the proceeding as a whole, National Fuel agreed to compromise and address and adopt certain proposed changes to its USP and low-income programs which are described in more detail below.

National Fuel Procedures (¶¶ 44-52)

In addition to the specific modifications to National Fuel's procedures that are described below, the Settlement also provides that at the Company's next Universal Service Advisory Committee (USAC) meeting, National Fuel will 1) convene the Parties to this proceeding to review and make additional appropriate revisions to its list of identification acceptable to establish service, with a specific emphasis on examining barriers to establishing service in low-income and underserved communities, and; 2) enhance the public-facing materials that explain National Fuel's identification requirements to establish service in collaboration with the USAC and present those materials to the Parties of this proceeding.⁶¹

Provisions Regarding Victims of Domestic Violence. In discovery, National Fuel provided the parties with their internal training materials and policies regarding treatment of victims of domestic violence. OCA and CAUSE-PA noted that National Fuel's processes for handling service requests from individuals who are victims of domestic violence were unnecessarily strict and not in compliance with the Public Utility Code.⁶² CAUSE-PA also raised concerns in its direct testimony that the Company's public facing materials regarding customers with protection from abuse orders (PFAs) are insufficient and require improvements.⁶³ The parties disagreed throughout their testimony about whether clarification and additional protections were needed, but ultimately agreed to a series of changes.

The Settlement provides that National Fuel will revise its policies, procedures, and training manuals related to victims of domestic violence to ensure that they are in line with Chapter 56 of the Commission's regulations and applicable Commission guidance. Specifically, the Settlement provides that National Fuel will 1) clarify in its internal training materials that a victim of domestic violence with a qualifying court order will be informed of and able to avail themselves of the protections of Chapter 56; 2) present its revised training materials at its next

⁶¹ Settlement Appendix A, Supplement No. 248 to National Fuel Gas Tariff Gas – PA PUC No. 9.

⁶² OCA St. 4 at 19.

⁶³ CAUSE-PA St. 1 at 62.

USAC meeting and solicit feedback; 3) enhance its public-facing policies and procedures related to customers who have PFAs in collaboration with the Parties to this proceeding; 4) begin accepting identification documents issued by foreign governments as acceptable identification to establish service within 30 days of this proceeding, and revise its internal materials to indicate that an applicant does not need to provide a Social Security number for themselves or household members to obtain service, and; 5) review all customer accounts with a security deposit each month to determine whether that account is a low-income household, and to return security deposits to low-income households within 30 days of making that determination.⁶⁴

The revisions adequately address the OCA's concerns about victims of domestic violence being able to receive service without meeting unnecessarily burdensome identification requirements. The revisions also ensure that underserved customers and low-income customers are able to obtain service from National Fuel. All parties, including the OCA, agreed that these Settlement provisions are in the public interest and should be approved.

CAUSE-PA agrees that these Settlement terms are in the public interest because National Fuel has agreed to align its policies with the regulatory requirements of Chapter 56, and, further, work with stakeholders to enhance its public facing documents, CAUSE-PA asserts that these provisions of the proposed Settlement reasonably address CAUSE-PA's recommendations to revise National Fuel's policies and procedures. Specifically, the proposed Settlement will clarify that victims of domestic violence will have access to critically important protections, including protection from liability against third-party debt, and access to critical flexibility related to payment arrangements. These protections are enshrined in regulation to help protect the safety and economic stability of victims of domestic violence. For these reasons, the provisions of the proposed Settlement regarding National Fuel's domestic violence policies and procedures are in the public interest and should be approved by the Commission without modification.

Identification Requirements to Establish Service. In response to discovery, National Fuel provided internal training documents regarding the identification requirements to

⁶⁴ See Settlement ¶ 44 at Settlement Appendix A.

establish residential service. In reviewing these materials, CAUSE-PA's expert witness was concerned that National Fuel's current identification requirements and policies to establish service are too restrictive and may inequitably exclude certain low income applicants or applicants from underserved communities, including immigrant and refugee households, who often face insurmountable barriers to obtaining the identification documents included on National Fuel's narrow list.⁶⁵ Pursuant to Paragraph 48 of the Settlement, National Fuel agrees that within 30 days of the Commission's approval of this proposed Settlement, the Company will accept identification documents issued by foreign governments.

The Company further agrees to develop a comprehensive list of acceptable documentation, to be reviewed at the Company's next USAC meeting in October 2023. Stakeholders at this meeting will review and make recommendations regarding additional forms of identification that may be acceptable to establish service, specifically examining barriers to establishing service faced by low income and certain underserved communities – including immigrants and refugees. Stakeholders will also review National Fuel's enhanced public facing materials regarding identification requirements. National Fuel will consider any feedback or suggestions and will explain why any recommendations were rejected. The results will be discussed at the subsequent USAC meeting.

CAUSE-PA asserts that these provisions of the proposed Settlement reasonably address concerns raised by CAUSE-PA that National Fuel's current identification policies and requirements to establish service are too restrictive and inequitably exclude vulnerable households from establishing services. The proposed Settlement will also help to ensure that stakeholders are provided an important opportunity to review and make recommendations related to barriers to vulnerable consumers establishing service, and require that National Fuel consider feedback received from stakeholders to eliminate these barriers. These provisions of the Joint Settlement are just, reasonable, and in the public interest, and should be approved by the Commission without modification.

⁶⁵ CAUSE-PA St. 1 at 60-61.

Security Deposits. CAUSE-PA also raised concerns that National Fuel was holding security deposits for certain confirmed low income customers, despite statutory and regulatory prohibitions on security deposits for all households confirmed to be income-eligible for CAP.⁶⁶ CAUSE-PA recommended that National Fuel be required to refund all deposits for customers with confirmed low income status and that National Fuel review its currently held security deposits on a monthly basis and issue a bill credit or refund for any deposit previously collected from confirmed low income customers.

In the Settlement, National Fuel agrees to review all customer accounts with a security deposit each month to determine whether that account is a low-income household. If it is determined that an account is held by a low-income household, the security deposit will be returned to the customer within 30 days. CAUSE-PA asserts that these provisions of the proposed Settlement address its concerns regarding the return of security deposits for low-income customers. These proposed Settlement provisions will help to ensure the return of security deposits for customers who are designated as low income by National Fuel on an ongoing basis. As this provision will help to ensure that National Fuel is complying with statutory requirements and Commission regulations, CAUSE-PA asserts that it is in public interest and should be approved by the Commission without modification.

National Fuel generally notes that the Settlement reflects a carefully balanced compromise of the competing and broad array of interests of the Joint Petitioners in this proceeding. The Joint Petitioners have agreed that, except as otherwise set forth in this Settlement, the revisions contained in Supplement No. 248 to National Fuel Gas Tariff Gas – P.A. P.U.C. No. 9, as contained in Appendix A will be approved.

Identification of Low-Income Households. The Settlement requires National Fuel to evaluate and improve upon its identification and enrollment of low-income customers in applicable customer programs. In direct testimony, the OCA raised several concerns about National Fuel’s performance regarding the identification of low-income customers. As explained by OCA witness Roger Colton, the first step toward providing adequate low-income

⁶⁶ CAUSE-PA St. 1 at 59-60: 10-15; *see also* 66 Pa.C.S. § 1404(a.1); 52 Pa. Code § 56.32(e).

assistance is to identify the low-income customer population of the utility. The OCA recommended specific outcome objectives that National Fuel should aspire to in order to increase identification of low-income customers and enrollment of low-income customers in low-income assistance programs.⁶⁷

The Settlement does not adopt the OCA's specific recommended outcome objectives, but it improves National Fuel's identification of low-income customers and their enrollment in applicable programming. Specifically, it provides that National Fuel will categorize its customers as confirmed low-income if it obtains information reasonably indicating that the customer is low-income and that National Fuel will maintain the confirmed low-income designation on customer accounts for at least five years. The Settlement also provides that National Fuel will review its list of confirmed low-income indicators with its USAC to consider whether additional indicators may be necessary, and at the Company's next USAC meeting in October 2023 National Fuel will discuss introducing measurable outcome objectives in collaboration with the Parties to this proceeding.

CAUSE-PA also supports the Settlement terms regarding the identification of low-income households. While CAUSE-PA's recommendations were not fully adopted, the Settlement was reached through extensive negotiations and represent a good faith compromise by all Parties in light of all relevant factors. These provisions will help to improve National Fuel's tracking of its low-income customers in line with Commission regulation. By requiring that low-income customer designations be maintained for at least five years, the proposed Settlement will help National Fuel to maintain a more accurate count of low-income customers, and assist eligible customers to access available low-income protections and assistance. Thus, CAUSE-PA asserts that these terms are in the public interest and should be approved by the Commission without modification.

⁶⁷ OCA St. 5 at 43-47.

Low-Income Programs (§§53-55)

Low-Income Residential Assistance Program (LIRA (§ 53)). The Settlement provides that National Fuel will work with members of its USAC to develop a survey of customers who are not enrolled in National Fuel's LIRA, but who nevertheless receive help from the Low-Income Home Energy Assistance Program (LIHEAP) to better understand why they are not enrolled in LIRA. The Settlement also provides that National Fuel will work with its USAC to simplify the process for LIHEAP recipients who are not enrolled in LIRA to enroll. This provision of the Settlement will be developed and implemented within four months after the initial launch date for National Fuel's percentage of income plan design.

National Fuel agrees to work with members of its USAC to develop a survey of non-LIRA LIHEAP recipients to better understand why they have not enrolled in LIRA and to develop a simplified process for non-LIRA LIHEAP recipients to enroll in CAP. This simplified process will be developed and implemented within four months of the initial launch date for National Fuel's LIRA Percentage of Income Payment (PIP) design.

While the OCA did not submit testimony on these issues, the OCA supports them as these terms will help to improve residential customers' enrollment in applicable customer programming, thus benefitting ratepayers. These Settlement terms are in the public interest and should be accepted.

CAUSE-PA asserts that these provisions of the proposed Settlement were reached through extensive negotiations and represent a good faith compromise by the joining Parties in light of all relevant factors. By developing a survey for non-LIRA LIHEAP recipients, National Fuel will be able to investigate barriers to LIHEAP recipients enrolling in LIRA in coordination with its USAC. By requiring that National Fuel develop a simplified process for LIHEAP recipients to enroll in LIRA, the proposed Settlement will help to eliminate duplicative and unnecessary barriers to LIRA enrollment. Thus, CAUSE-PA asserts that these terms are just, reasonable, and in the public interest, and should be approved by the Commission without modification.

Low-Income Usage Reduction Program (LIURP). National Fuel did not propose any modifications to LIURP or the budget for LIURP in its initial filing. OCA, CAUSE-PA and PWPTF all proposed modifications to the Company's LIURP.

The Settlement provides that National Fuel will increase its annual LIURP budget by \$91,000. The Settlement further provides that National Fuel will improve its tracking of LIURP deferrals and rejections by customer segment to better understand the barriers to enrollment, and commission an independent third-party LIURP evaluation and needs assessment to identify additional areas for improvement in the delivery and reach of its LIURP services funded through and not to exceed the LIURP budget. National Fuel also agreed to make best efforts to increase LIURP and Emergency Repair and Replacement (ERRP) job totals to 275 per year, subject to contractor availability, and to develop a plan to fully expend its LIURP budget each year.

OCA notes that while the Settlement does not incorporate OCA's exact recommendations, its provisions help address the concerns raised by OCA and provides some level of protection for low-income customers from the settled-upon revenue increase of \$23.0 million. The additional LIURP dollars will help to ensure that the Company can treat additional homes and provide health and safety remediations to LIURP participants, and the provision requiring that the entire LIURP budget be expended will ensure that the entire LIURP budget goes toward helping low-income customers. The LIURP provisions of the Settlement will help National Fuel create solutions to obtain better enrollment in LIURP and help additional customers reduce their usage and lower their bills. Thus, these LIURP terms should be approved as in the public interest.

CAUSE-PA similarly endorses the Settlement terms regarding LIURP. CAUSE-PA states that the Settlement terms will help ensure that more low-income, high usage customers are able to access comprehensive weatherization and energy efficiency measures, which will improve bill affordability, and, in turn, help prevent terminations and the accrual of uncollectible expenses in light of increased rates approved as part of this comprehensive settlement. Thus,

CAUSE-PA submits that these provisions are just, reasonable and in the public interest and should be approved without modification.

Neighbor For Neighbor (NFN). National Fuel did not initially propose any modifications or changes to its NFN grant program. CAUSE-PA and PWPTF recommended increases to the Company's annual contribution to NFN as a condition of any base rate increase.⁶⁸ The Company opposed the recommendations of CAUSE-PA and PWPTF for a number of reasons, including that after the completion of the recent Commission audit of the USECP, modifications were made to the NFN program that went into effect on October 1, 2022, which resulted in a large increase in the number of applicants receiving grants through this program.⁶⁹ Moreover, the Company explained that it continuously monitors the program's fund balance and will always consider additional contributions if needed, but that the fund balance was more than \$310,000 dollars as of December 31, 2022.⁷⁰

In testimony, CAUSE-PA explained that low-income households already struggle to afford necessities and must often make impossible trade-offs between paying for shelter, food, utilities, or other basic needs, and that any increase in rates will lead to increased payment trouble and terminations for these vulnerable customers. Mr. Geller pointed to low-income customers' markedly higher rate of termination, explaining that despite comprising only 11.8% of residential customers, confirmed low-income customers accounted for 47.6% of residential terminations. He explained that the disparity in termination rates underscores the need for strengthening the assistance provided to low-income consumers through National Fuel's universal service programs.⁷¹

Under the Settlement, National Fuel will provide a warm referral to all potentially eligible payment-troubled confirmed low-income customers to NFN and increase its annual

⁶⁸ CAUSE-PA St. 1 at 37-41; PWPTF St. 1 at 8.

⁶⁹ *See*, National Fuel St. 17-R at 31-32.

⁷⁰ National Fuel St. 17-R at 32.

⁷¹ CAUSE-PA St. 1 at 16-21.

contributions to the fund to \$92,000, with any unspent funds rolling over to the subsequent year. This provision will continue National Fuel's efforts to increase the number of customers who can obtain an NFN grant and will help eligible customers avoid accruing significant arrearages. This provision is a reasonable compromise of the Parties' competing litigation positions and, therefore, is in the public interest and should be approved.

CAUSE-PA supports these provisions of the proposed Settlement because these terms will help ensure that emergency assistance is available to protect low-income customers facing payment trouble due to the increase in rates and will better protect low-income customers facing acute financial hardship from termination.

The OCA did not present testimony about the NFN, nor did the OCA object to other parties' proposals regarding the NFN in this proceeding. Thus, the OCA does not oppose this term as a full and fair compromise between Joint Petitioners.

PWPTF joins the Settlement, stating the view that the Settlement adequately addresses the funding of the Company's universal service programs, which serve to balance the effect of the increase in rates. Accordingly, PWPTF agrees that the Settlement should be approved without modification.

Conclusion

The Joint Petitioners agree that the Settlement is in the public interest. Generally, the Settlement moderates proposed rate increase to most of National Fuel's customer classes. A very detailed analysis of the impacts on customer bills in each rate class is included in the Joint Petition for Settlement at Appendix C.

The Settlement was achieved only after a comprehensive investigation of National Fuel's proposals set forth in its 2022 Base Rate Case. In addition to informal discovery, National Fuel responded to approximately 550 formal discovery requests, many of which included multiple subparts. The active Parties submitted several rounds of written testimony, including

National Fuel's direct testimony, other Parties' direct testimony, rebuttal testimony, surrebuttal testimony, and rejoinder testimony. Further, the Parties engaged in numerous settlement discussions and formal negotiations, which ultimately led to the Settlement.

The Joint Petitioners undertook a tremendous effort to reach a full settlement of all issues. The Joint Petitioners each had to compromise on many different and competing issues and proposals raised in this case. In some instances, and in exchange for reaching an agreement on other issues, the Joint Petitioners collectively agreed to accept or reject a certain party's litigation position or to meet somewhere in between competing litigation positions. As such, when determining whether the Settlement is reasonable and in the public interest, the Commission should view the Settlement as a whole instead of focusing on individual terms and conditions.

As noted previously, the Settlement reflects a carefully balanced compromise of the competing and broad array of interests of the Joint Petitioners in this proceeding. The Joint Petitioners, their counsel, and their expert consultants have considerable experience in base rate proceedings. Their knowledge, experience, and ability to evaluate the strengths and weaknesses of their litigation positions provided a strong base upon which to build a consensus in this proceeding. The fact that the Settlement is supported by Joint Petitioners representing a diversity of constituents and interests, in and of itself, provides strong evidence that the Settlement is reasonable and in the public interest, particularly given the active role of the Parties in this proceeding as well as the many negotiations required to achieve the Settlement. I recommend that the Commission approve the Joint Petition for Settlement without modification.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the Parties to this proceeding. 66 Pa.C.S. §§ 1301, 1308(d).
2. A public utility's rates must be just and reasonable. 66 Pa.C.S. § 1301.

3. The Commission has broad discretion in determining whether rates are reasonable and to decide what factors it will consider in setting or evaluating a utility's rates. *Pa. Publ. Util. Comm'n v. City of Bethlehem - Water Dep't*, Docket No. R-2020-3020256 (Opinion and Order entered April 15, 2021) (citing *Popowsky v. Pa. Pub. Util. Comm'n*, 683 A.2d 958 (Pa. Cmwlth. 1996)). See also, *Popowsky v. Pa. Pub. Util. Comm'n*, 665 A.2d 808 (Pa. 1995).

4. The application of science and policy to the allocation of a revenue increase is within the Commission's discretion: There is no set formula for determining proper ratios among the rates of different customer classes. What is reasonable under the circumstances, the proper difference among rate classes, is an administrative question for the Commission to decide. *Peoples Nat. Gas Co. v. Pa. Publ. Util. Comm'n*, 409 A.2d 446 (Pa. Cmwlth. 1979); see also, *Pa. Pub. Util. Comm'n v. Comty. Utils. Inc.*, Docket R-2021-3025206 (Opinion and Order entered January 13, 2022)(citations omitted).

5. Commission policy promotes settlements. 52 Pa. Code § 5.231.

6. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401.

7. In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n, v. UGI Utils., Inc. – Gas Division*, Docket No. R-2015-2518438 (Order entered Oct. 14, 2016); *Pa. Pub. Util. Comm'n v. CS Water & Sewer Assoc.*, 74 Pa.P.U.C. 767 (1991).

8. The joint petitioners have the burden to prove that the Settlement is in the public interest. *Pa. Publ. Util. Comm'n v. City of Bethlehem - Water Dep't*, Docket No. R-2020-3020256 (Opinion and Order entered Apr. 15, 2021).

9. The Joint Petition for Settlement is in the public interest. *Lloyd v. Pa. Pub. Util. Comm'n*, 904 A.2d 1010 (Pa. Cmwlth. 2006).

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Settlement filed on April 13, 2023, by National Fuel Gas Distribution Corporation, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania and the Pennsylvania Weatherization Providers Task Force be granted, and the Settlement be adopted, in full, without modification or correction.

2. That National Fuel Gas Distribution Corporation shall be authorized to file tariffs, tariff supplements or tariff revisions containing rates, rules, and regulations, consistent with the Joint Petition for Settlement, to produce an increase in annual revenues of \$23.0 million, consistent with the rates, rules and regulations set forth in Appendix B (Proof of Revenue) to the Joint Petition for Settlement.

3. That National Fuel Gas Distribution Corporation shall be permitted to file tariffs in the form set forth in Appendix A to the Joint Petition for Settlement, to become effective upon at least one day's notice, for service rendered on and after July 27, 2023, so as to produce an annual increase in revenues consistent with this Order.

4. National Fuel Gas Distribution Corporation, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania and the Pennsylvania Weatherization Providers Task Force shall comply with the terms of the Joint Petition for Settlement submitted in this proceeding, as though each term and condition stated therein had been the subject of an individual ordering paragraph.

5. That the Formal Complaint of the Office of Consumer Advocate at Docket No. C-2022-3036725, be deemed satisfied and marked closed.

6. That the Formal Complaint of the Office of Small Business Advocate at Docket No. C-2022-3036655, be deemed satisfied and marked closed.

7. That the Formal Complaints of Deokey Balraj, Docket No. C-2022-3037294, and Elizabeth Woolslare, Docket No. C-2022-3037477, in this proceeding be dismissed and marked as closed.

8. That upon acceptance and approval by the Commission of the tariffs and allocation of proposed settlement rate increase filed by National Fuel Gas Distribution Corporation, this proceeding shall be terminated and marked closed.

Date: May 3, 2023

/s/
Mary D. Long
Administrative Law Judge